IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.2121 OF 2005

M/s.Shahani Housing Development & Ors. : Petitioners

V/s.

Bank of India : Respondent

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Mr.Kamaldeep instructed by M/s.Paras Kuhad & Associate for the petitioners.

None present for the respondent.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE : APRIL 4, 2005.

P.C.:

1. The petitioners have challenged the order of the Debts Recovery Appellate Tribunal, Mumbai, dismissing the petitioners' appeal. The petitioners had appealed to the Appellate Tribunal against the order of the Debts Recovery Tribunal refusing to issue discovery and interrogatories to the respondent-Bank.

2. The respondent-Bank has sued the petitioners for recovery of a sum of Rs.14,29,412.97 being the amount due from them in respect of a Cash Credit Facility as on 21.9.2000 with further interest at the rate of 18% per annum with quarterly rests

from 22.9.2000 till payment and/or realisation.

3. The petitioners applied under Order 11 Rule 1 of the Code of Civil Procedure in respect of certain documents relied upon by the Bank. Apparently, according to the petitioners, it became necessary because one A. B. Patwardhan who tendered the affidavit of evidence on behalf of the Bank has no personal knowledge of the transaction and, therefore, it is necessary to interrogate A. B. Patwardhan as to the statements made by him in his affidavit. The Tribunal agreed that it was permissible for the parties to deliver an interrogatory to the opponent, but observed that this right has to be exercised at the proper time and at the proper stage. The Tribunal rejected the petitioners' request since the Original Application was ready for final hearing on 8.5.2002 and that the matter was ready for final arguments on 8.5.2002. The Original Application itself has been pending before the Tribunal since the year 2000. Therefore, the Tribunal took the view that facilitating the final hearing on 8.5.2002, the petitioners are attempting to protract the proceedings.

4. The view of the Tribunal appears to be justified in the circumstances of the case.

Initially, they applied for cross-examination of the witness. This application was rejected on 19.8.2002. To get around the order, it appears that the petitioners by the present application for delivering interrogatories on the same grounds. The Tribunal has, in fact, observed that the present application is nothing but a duplicate copy of the application for cross-examination which was rejected earlier. The petitioners carried the matter in appeal. The Appellate Court has concurred with the Tribunal and observed that even if the petitioners' contention that Patwardhan, the Bank's witness, was not conversant with the transaction was correct, his evidence could be ignored. The Appellate Tribunal observed that the onus to prove its case lay on the Bank and there was no justification whatsoever for seeking delivery of interrogatories after all the pleadings of the parties was complete and the matter was due for final hearing

since 2002. We find no error of law apparent on the face of the record of the Appellate Tribunal. There is a provision for seeking delivery of interrogatories on the opponent, but as observed by the Tribunal, this right should be exercised at an appropriate stage and certainly not with a view to get around rejection of an earlier order. We are satisfied that in the present case, the application for seeking delivery of interrogatories has been made on the same ground as the earlier application for cross-examination of the Bank's witness. The earlier application having been rejected, we find no infirmity in the Tribunal having refused to entertain the present application. We see no reason at all why the parties ought to have resorted to such methods of protracting the litigation by filing one application after another and then approaching this Court. Having regard to the abuse of the process of law resorted to in the present case, we consider it appropriate to dismiss the present petition with costs quantified at Rs.10,000/-.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.